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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/820,004

04/08/2004

Ballie Michel

0510-1093

8562

466 7590 07/23/2009

YOUNG & THOMPSON
209 Madison Street
Suite 500
ALEXANDRIA, VA 22314

EXAMINER

BRUNSMAN, DAVID M

ART UNIT

PAPER NUMBER

1793

MAIL DATE

DELIVERY MODE

07/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/820,004	Applicant(s) MICHEL, BALLIE	
	Examiner David M. Brunzman	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-21, 23-34 and 36-43 is/are pending in the application.
- 4a) Of the above claim(s) 26, 27, 39 and 40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-21, 23-25, 28-34, 36-38 and 41-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 18-21 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Applicant response including amendment obviates the rejection over US 2749247. Further consideration and search was required. Due to the amendment made, a new rejection has been entered over US 5021476. Limitation of the relative proportions of vegetable oil and resin is taken as indicating that compositions made therefrom have the required properties. No evidence of record currently shows that compositions having the proportions of the amended claims would not exhibit these properties. The previous rejection under 112(1) is also withdrawn in view of applicant's response. With respect to the election of species, upon further search and consideration the requirement with respect to the vegetable oil species is withdrawn. The election of rosin esters as the resin component is still in effect.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 18-21, 23-25, 28, 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5021476.

Example 2 of the reference teaches a binder composition comprising 16% vegetable oil (soy bean oil) and 84% tall oil rosin. The similar components employed would be expected to exhibit similar properties. The differences between the example and the instant claims is the proportion of oil and the type of rosin used.

Claim 5 of the reference teaches that the preferred proportion of oil in the binding agent is 15-20%. It would have been obvious to one of ordinary skill in the art to employ

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20% vegetable oil in the composition of example 2 because the reference teaches it falls within the most preferred embodiment.

Column 2, lines 20-22 of the reference teach that the ester form of the rosin is most preferred for producing the most stable pavements even though it is more expensive. It would have been obvious to one of ordinary skill in the art to use the ester form of the tall oil rosin of example 2 in order to increase the stability of the products formed as taught by the reference.

Claims 31-34, 36-38, 41-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5021476 as applied to the claims above, and further in view of Barnes et al.

Barnes et al teach the addition of cobalt octanoate to vegetable oils as a drier. A drier is a compound added to oils to increase the hardness of the film formed. It would have been obvious to one of ordinary skill in the art to add cobalt octanoate to the composition of US 5021476 in order to increase the hardness of the cured binder.

Claims 26,27,39 and 40 remain withdrawn as drawn to a nonelected species.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David M. Brunzman whose telephone number is 571-272-1365. The examiner can normally be reached on M, Th, F, Sa; 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jerry Lorengo can be reached on 571-272-1233. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David M Brunzman/
Primary Examiner, Art Unit 1793

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